

Calendar No. 460

105TH CONGRESS
2D SESSION**S. 512**

To amend chapter 47 of title 18, United States Code, relating to identity fraud, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 21, 1997

Mr. KYL (for himself, Mr. FAIRCLOTH, Mr. HARKIN, Mr. WARNER, Mr. MURKOWSKI, and Mr. ROBB) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 9, 1998

Reported by Mr. HATCH, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

A BILL

To amend chapter 47 of title 18, United States Code, relating to identity fraud, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Identity Theft and As-
5 sumption Deterrence Act of 1997”.

1 **SEC. 2. IDENTITY FRAUD.**

2 (a) ESTABLISHMENT OF OFFENSE.—

3 (1) IN GENERAL.—Chapter 47 of title 18,
4 United States Code, is amended by adding at the
5 end the following:

6 **“§ 1036. Identity fraud**

7 “(a) PROHIBITION.—Whoever in interstate or foreign
8 commerce—

9 “(1) knowingly and with intent to deceive or de-
10 fraud, obtains, possesses, transfers, uses, or at-
11 tempts to obtain, transfer, or use, one or more
12 means of identification other than that issued law-
13 fully for the use of the possessor;

14 “(2) attempts to commit an offense under para-
15 graph (1); or

16 “(3) is a party to a conspiracy of two or more
17 persons to commit an offense under paragraph (1);
18 shall be punished as provided in subsection (b).

19 “(b) PUNISHMENT.—

20 “(1) IN GENERAL.—Whoever violates subsection
21 (a) shall be fined under this title, imprisoned not
22 more than 15 years, or both.

23 “(2) RESTITUTION.—In sentencing a defendant
24 convicted of an offense under this section, the court
25 may order that the defendant make restitution in ac-
26 cordance with section 3663.

1 “(c) INVESTIGATION AUTHORITY.—In addition to
 2 any other agency having such authority, the United States
 3 Secret Service of the Department of the Treasury may in-
 4 vestigate any offense under this section.

5 “(d) DEFINITION.—In this section, the term ‘means
 6 of identification’ means any name or number that may be
 7 used, alone or in conjunction with any other information,
 8 to assume the identity of an individual, including any—
 9 “(1) personal identification card (as that term
 10 is defined in section 1028); or
 11 “(2) access device, counterfeit access device, or
 12 unauthorized access device (as those terms are de-
 13 fined in section 1029).”.

14 “(2) SENTENCING ENHANCEMENT.—Pursuant to
 15 its authority under section 994(p) of title 28, United
 16 States Code, the United States Sentencing Commis-
 17 sion shall amend the Federal sentencing guidelines
 18 to provide for sentencing enhancements under chap-
 19 ter 2 of the Federal sentencing guidelines for a de-
 20 fendant who is convicted of an offense under section
 21 1036 of title 18, United States Code, in connection
 22 with an offense under section 513, 514, 1028, or
 23 1029 of title 18, United States Code, as follows:

24 “(A) A sentencing enhancement of 1 level,
 25 if the offense involves not more than 1 victim.

1 (B) A sentencing enhancement of 2 levels;
 2 if the offense involves not less than 2 and not
 3 more than 4 victims.

4 (C) A sentencing enhancement of 3 levels;
 5 if the offense involves 5 or more victims.

6 (3) CLERICAL AMENDMENT.—The chapter anal-
 7 ysis for chapter 47 of title 18, United States Code,
 8 is amended by adding at the end the following:

“1036. Identity fraud.”.

9 (b) FORFEITURE OF CONTRABAND.—Section
 10 80302(a) of title 49, United States Code, is amended—

11 (1) in paragraph (5), by striking “or” at the
 12 end;

13 (2) in paragraph (6), by striking the period at
 14 the end and inserting a semicolon; and

15 (3) by adding at the end the following:

16 “(7) an identification document, false identifica-
 17 tion document, or a document-making implement (as
 18 those terms are defined in section 1029 of title 18)
 19 involved in a violation of section 1029 of title 18;

20 “(8) a counterfeit access device, device-making
 21 equipment, or scanning receiver (as those terms are
 22 defined in section 1029 of title 18); or

23 “(9) a means of identification (as that term is
 24 defined in section 1036 of title 18) involved in a vio-
 25 lation of section 1036 of title 18.”.

1 (c) ~~RESTITUTION.~~—Section ~~3663~~ of title 18, United
 2 States Code, is amended by adding at the end the follow-
 3 ing:

4 “(c) ~~IDENTITY FRAUD.~~—

5 “(1) ~~IN GENERAL.~~—In sentencing a defendant
 6 convicted of an offense under section ~~1028~~, ~~1029~~, or
 7 ~~1036~~, the court may order, in addition to or in lieu
 8 of any other penalty authorized by law, that the de-
 9 fendant make restitution to any victim of the of-
 10 fense.

11 “(2) ~~COSTS INCLUDED.~~—Making restitution to
 12 a victim under this subsection may include payment
 13 for any costs, including attorney fees, incurred by
 14 the victim—

15 “(A) in clearing the credit history or credit
 16 rating of the victim; or

17 “(B) in connection with any civil or admin-
 18 istrative proceeding to satisfy any debt, lien, or
 19 other obligation of the victim arising as a result
 20 of the actions of the defendant.”.

21 (d) ~~IDENTITY FRAUD INFORMATION AND STUDY.~~—

22 (1) ~~DEFINITIONS.~~—In this subsection—

23 (A) the term “financial institution” has
 24 the same meaning as in section 20 of title 18,
 25 United States Code; and

1 ~~(B)~~ the term “identity fraud” means an
 2 offense described in section 1036 of title 18,
 3 United States Code (as added by subsection (a)
 4 of this section).

5 ~~(2) IDENTITY FRAUD INFORMATION.~~—Begin-
 6 ning not later than 60 days after the date of enact-
 7 ment of this Act, the United States Secret Service
 8 of the Department of the Treasury shall collect and
 9 maintain information and statistical data relating
 10 to—

11 ~~(A)~~ the number of identity fraud offenses
 12 investigated;

13 ~~(B)~~ the number of prosecutions and convic-
 14 tions for identity fraud;

15 ~~(C)~~ any information provided to the United
 16 States Secret Service by State and local law en-
 17 forcement agencies relating to the investigation
 18 of identity fraud; and

19 ~~(D)~~ any information provided to the
 20 United States Secret Service by financial insti-
 21 tutions relating to the financial consequences of
 22 identity fraud.

23 ~~(3) IDENTITY FRAUD STUDY.~~—Not later than
 24 18 months after the date of enactment of this Act,

1 the Secretary of the Treasury and the Chairman of
 2 the Federal Trade Commission, shall—

3 ~~(A) conduct a comprehensive study of—~~

4 ~~(i) the nature, extent, and causes of~~
 5 ~~identity fraud; and~~

6 ~~(ii) the threat posed by identity fraud~~
 7 ~~to—~~

8 ~~(I) financial institutions and pay-~~
 9 ~~ment systems; and~~

10 ~~(II) consumer safety and privacy;~~
 11 ~~and~~

12 ~~(B) based on the results of that study,~~
 13 ~~submit to Congress specific recommendations~~
 14 ~~for legislation to address the problem of identity~~
 15 ~~fraud.~~

16 **SECTION 1. SHORT TITLE.**

17 *This Act may be cited as the “Identity Theft and As-*
 18 *sumption Deterrence Act of 1998”.*

19 **SEC. 2. IDENTITY THEFT.**

20 *(a) ESTABLISHMENT OF OFFENSE.—Section 1028(a)*
 21 *of title 18, United States Code, is amended—*

22 *(1) in paragraph (5), by striking “or” at the*
 23 *end;*

24 *(2) in paragraph (6), by adding “or” at the end;*

1 (3) *in the flush matter following paragraph (6),*
 2 *by striking “or attempts to do so,”; and*

3 (4) *by inserting after paragraph (6) the follow-*
 4 *ing:*

5 “(7) *knowingly possesses, transfers, or uses, with-*
 6 *out lawful authority, a means of identification of an-*
 7 *other person with the intent to commit, or otherwise*
 8 *promote, carry on, or facilitate any unlawful activity*
 9 *that constitutes a violation of Federal law, or that*
 10 *constitutes a felony under any applicable State or*
 11 *local law;”.*

12 (b) *PENALTIES.—Section 1028(b) of title 18, United*
 13 *States Code, is amended—*

14 (1) *in paragraph (1)—*

15 (A) *in subparagraph (B), by striking “or”*
 16 *at the end*

17 (B) *in subparagraph (C), by adding “or” at*
 18 *the end; and*

19 (C) *by adding at the end the following:*

20 “(D) *an offense under paragraph (7) of*
 21 *such subsection that involves the transfer, posses-*
 22 *sion, or use of 1 or more means of identification*
 23 *if, as a result of the offense, any individual com-*
 24 *mitting the offense obtains anything of value ag-*

1 gregating \$1,000 or more during any 1-year pe-
 2 riod;”;

3 (2) in paragraph (2)(A), by striking “or transfer
 4 of an identification document or” and inserting “pos-
 5 session, transfer, or use of a means of identification,
 6 an identification document, or a”;

7 (3) by striking paragraphs (3) and (4) and in-
 8 serting the following:

9 “(3) a fine under this title or imprisonment for
 10 not more than 20 years, or both, if the offense is com-
 11 mitted—

12 “(A) to facilitate a drug trafficking crime
 13 (as defined in section 929(a)(2)); or

14 “(B) after a prior conviction under this sec-
 15 tion becomes final;

16 “(4) a fine under this title or imprisonment for
 17 not more than 25 years, or both, if the offense is com-
 18 mitted—

19 “(A) to facilitate an act of international
 20 terrorism (as defined in section 2331(1)); or

21 “(B) in connection with a crime of violence
 22 (as defined in section 924(c)(3));”;

23 (4) by redesignating paragraph (5) as para-
 24 graph (6); and

1 (5) *by inserting after paragraph (4) (as added*
 2 *by paragraph (3) of this subsection) the following:*

3 “(5) *in the case of any offense under subsection*
 4 *(a), forfeiture to the United States of any personal*
 5 *property used or intended to be used to commit the*
 6 *offense; and”.*

7 (c) *CIRCUMSTANCES.—Section 1028(c) of title 18,*
 8 *United States Code, is amended by striking paragraph (3)*
 9 *and inserting the following:*

10 “(3) *either—*

11 “(A) *the production, transfer, possession, or*
 12 *use prohibited by this section is in or affects*
 13 *interstate or foreign commerce; or*

14 “(B) *the means of identification, identifica-*
 15 *tion document, false identification document, or*
 16 *document-making implement is transported in*
 17 *the mail in the course of the production, transfer,*
 18 *possession, or use prohibited by this section.”.*

19 (d) *DEFINITIONS.—Section 1028 of title 18, United*
 20 *States Code, is amended by striking subsection (d) and in-*
 21 *serting the following:*

22 “(d) *DEFINITIONS.—In this section:*

23 “(1) *DOCUMENT-MAKING IMPLEMENT.—The term*
 24 *‘document-making implement’ means any implement,*
 25 *impression, electronic device, or computer hardware*

1 or software, that is specifically configured or pri-
 2 marily used for making an identification document,
 3 a false identification document, or another document-
 4 making implement.

5 “(2) *IDENTIFICATION DOCUMENT.*—The term
 6 ‘identification document’ means a document made or
 7 issued by or under the authority of the United States
 8 Government, a State, political subdivision of a State,
 9 a foreign government, political subdivision of a for-
 10 eign government, an international governmental or
 11 an international quasi-governmental organization
 12 which, when completed with information concerning a
 13 particular individual, is of a type intended or com-
 14 monly accepted for the purpose of identification of in-
 15 dividuals.

16 “(3) *MEANS OF IDENTIFICATION.*—The term
 17 ‘means of identification’ means any name or number
 18 that may be used, alone or in conjunction with any
 19 other information, to identify a specific individual,
 20 including any—

21 “(A) name, social security number, date of
 22 birth, official State or government issued driver’s
 23 license or identification number, alien registra-
 24 tion number, government passport number, em-
 25 ployer or taxpayer identification number;

1 “(B) *unique biometric data, such as finger-*
 2 *print, voice print, retina or iris image, or other*
 3 *unique physical representation;*

4 “(C) *unique electronic identification num-*
 5 *ber, address, or routing code; or*

6 “(D) *telecommunication identifying infor-*
 7 *mation or access device (as defined in section*
 8 *1029(e)).*

9 “(4) *PERSONAL IDENTIFICATION CARD.—The*
 10 *term ‘personal identification card’ means an identi-*
 11 *fication document issued by a State or local govern-*
 12 *ment solely for the purpose of identification.*

13 “(5) *PRODUCE.—The term ‘produce’ includes*
 14 *alter, authenticate, or assemble.*

15 “(6) *STATE.—The term ‘State’ includes any*
 16 *State of the United States, the District of Columbia,*
 17 *the Commonwealth of Puerto Rico, and any other*
 18 *commonwealth, possession, or territory of the United*
 19 *States.”.*

20 “(e) *ATTEMPT AND CONSPIRACY.—Section 1028 of title*
 21 *18, United States Code, is amended by adding at the end*
 22 *the following:*

23 “(f) *ATTEMPT AND CONSPIRACY.—Any person who at-*
 24 *tempts or conspires to commit any offense under this section*
 25 *shall be subject to the same penalties as those prescribed*

1 *for the offense, the commission of which was the object of*
 2 *the attempt or conspiracy.”.*

3 *(f) RULE OF CONSTRUCTION.—Section 1028 of title 18,*
 4 *United States Code, is amended by adding at the end the*
 5 *following:*

6 *“(g) RULE OF CONSTRUCTION.—For purpose of sub-*
 7 *section (a)(7), a single identification document or false*
 8 *identification document that contains 1 or more means of*
 9 *identification shall be construed to be 1 means of identifica-*
 10 *tion.”.*

11 *(g) CONFORMING AMENDMENTS.—Chapter 47 of title*
 12 *18, United States Code, is amended—*

13 *(1) in section 1028, by striking “or attempts to*
 14 *do so,”;*

15 *(2) in the heading for section 1028, by adding*
 16 *“**and information**” at the end; and*

17 *(3) in the analysis for the chapter, in the item*
 18 *relating to section 1028, by adding “and informa-*
 19 *tion” at the end.*

20 **SEC. 3. RESTITUTION.**

21 *Section 3663A of title 18, United States Code, is*
 22 *amended—*

23 *(1) in subsection (c)(1)(A)—*

24 *(A) in clause (ii), by striking “or” at the*
 25 *end;*

1 (B) in clause (iii), by striking “and” at the
2 end and inserting “or”; and

3 (C) by adding at the end the following:

4 “(iv) an offense described in section 1028
5 (relating to fraud and related activity in connec-
6 tion with means of identification or identifica-
7 tion documents); and”; and

8 (2) by adding at the end the following:

9 “(e) *FRAUD AND RELATED ACTIVITY IN CONNECTION*
10 *WITH IDENTIFICATION DOCUMENTS AND INFORMATION.*—
11 *Making restitution to a victim under this section for an*
12 *offense described in section 1028 (relating to fraud and re-*
13 *lated activity in connection with means of identification*
14 *or identification documents) may include payment for any*
15 *costs, including attorney fees, incurred by the victim, in-*
16 *cluding any costs incurred—*

17 “(1) in clearing the credit history or credit rat-
18 ing of the victim; or

19 “(2) in connection with any civil or administra-
20 tive proceeding to satisfy any debt, lien, or other obli-
21 gation of the victim arising as a result of the actions
22 of the defendant.”.

1 **SEC. 4. AMENDMENT OF FEDERAL SENTENCING GUIDE-**
 2 **LINES FOR OFFENSES UNDER SECTION 1028.**

3 (a) *IN GENERAL.*—Pursuant to its authority under
 4 section 994(p) of title 28, United States Code, the United
 5 States Sentencing Commission shall review and amend the
 6 Federal sentencing guidelines and the policy statements of
 7 the Commission, as appropriate, to provide an appropriate
 8 penalty for each offense under section 1028 of title 18,
 9 United States Code, as amended by this Act.

10 (b) *FACTORS FOR CONSIDERATION.*—In carrying out
 11 subsection (a), the United States Sentencing Commission
 12 shall consider, with respect to each offense described in sub-
 13 section (a)—

14 (1) *the extent to which the number of victims (as*
 15 *defined in section 3663A(a) of title 18, United States*
 16 *Code) involved in the offense, including harm to rep-*
 17 *utation, inconvenience, and other difficulties resulting*
 18 *from the offense, is an adequate measure for establish-*
 19 *ing penalties under the Federal sentencing guidelines;*

20 (2) *the number of means of identification, identi-*
 21 *fication documents, or false identification documents*
 22 *(as those terms are defined in section 1028(d) of title*
 23 *18, United States Code, as amended by this Act) in-*
 24 *volved in the offense, is an adequate measure for es-*
 25 *tablishing penalties under the Federal sentencing*
 26 *guidelines;*

1 (3) *the extent to which the value of the loss to*
2 *any individual caused by the offense is an adequate*
3 *measure for establishing penalties under the Federal*
4 *sentencing guidelines;*

5 (4) *the range of conduct covered by the offense;*

6 (5) *the extent to which sentencing enhancements*
7 *within the Federal sentencing guidelines and the*
8 *court's authority to sentence above the applicable*
9 *guideline range are adequate to ensure punishment at*
10 *or near the maximum penalty for the most egregious*
11 *conduct covered by the offense;*

12 (6) *the extent to which Federal sentencing guide-*
13 *lines sentences for the offense have been constrained by*
14 *statutory maximum penalties;*

15 (7) *the extent to which Federal sentencing guide-*
16 *lines for the offense adequately achieve the purposes of*
17 *sentencing set forth in section 3553(a)(2) of title 18,*
18 *United States Code; and*

19 (8) *any other factor that the United States Sen-*
20 *tencing Commission considers to be appropriate.*

1 **SEC. 5. CENTRALIZED COMPLAINT AND CONSUMER EDU-**
2 **CATION SERVICE FOR VICTIMS OF IDENTITY**
3 **THEFT.**

4 (a) *IN GENERAL.*—Not later than 1 year after the date
5 of enactment of this Act, the Federal Trade Commission
6 shall establish procedures to—

7 (1) *log and acknowledge the receipt of complaints*
8 *by individuals who certify that they have a reason-*
9 *able belief that 1 or more of their means of identifica-*
10 *tion (as defined in section 1028 of title 18, United*
11 *States Code, as amended by this Act) have been as-*
12 *sumed, stolen, or otherwise unlawfully acquired in*
13 *violation of section 1028 of title 18, United States*
14 *Code, as amended by this Act;*

15 (2) *provide informational materials to individ-*
16 *uals described in paragraph (1); and*

17 (3) *refer complaints described in paragraph (1)*
18 *to appropriate entities, which may include referral*
19 *to—*

20 (A) *the 3 major national consumer report-*
21 *ing agencies; and*

22 (B) *appropriate law enforcement agencies*
23 *for potential law enforcement action.*

24 (b) *AUTHORIZATION OF APPROPRIATIONS.*—There are
25 *authorized to be appropriated such sums as may be nec-*
26 *essary to carry out this section.*

1 **SEC. 6. TECHNICAL AMENDMENTS TO TITLE 18, UNITED**
 2 **STATES CODE.**

3 (a) *TECHNICAL CORRECTION RELATING TO CRIMINAL*
 4 *FORFEITURE PROCEDURES.*—Section 982(b)(1) of title 18,
 5 *United States Code*, is amended to read as follows: “(1) The
 6 forfeiture of property under this section, including any sei-
 7 zure and disposition of the property and any related judi-
 8 cial or administrative proceeding, shall be governed by the
 9 provisions of section 413 (other than subsection (d) of that
 10 section) of the *Comprehensive Drug Abuse Prevention and*
 11 *Control Act of 1970* (21 U.S.C. 853).”.

12 (b) *ECONOMIC ESPIONAGE AND THEFT OF TRADE SE-*
 13 *CRETS AS PREDICATE OFFENSES FOR WIRE INTERCEP-*
 14 *TION.*—Section 2516(1)(a) of title 18, *United States Code*,
 15 is amended by inserting “chapter 90 (relating to protection
 16 of trade secrets),” after “to espionage),”.

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